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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:13-CR-00064-HZ

3:14-CR-00190-HZ

v.

CYRUS ANDREW SULLIVAN,

Defendant.

**GOVERNMENT'S REPLY TO
DEFENDANT'S OPPOSITION TO
THE GOVERNMENT'S
PROTECTIVE ORDER**

The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, through Gregory R. Nyhus, Assistant United States Attorney (AUSA) for the District of Oregon, provides this memorandum for the Court's consideration in the above-entitled matter.

I. BACKGROUND

The government has moved for a protective order seeking significant limitations on defendant's retention of materials expected to be provided to defense counsel in anticipation of defendant's supervised release hearing. Specifically, the order does not prohibit access or otherwise limit defendant's review of any material (with the exception of personally identifying

information) but rather seeks to prevent defendant from retaining documents. The order, further, allows counsel to receive a fully unredacted copy of materials.

Defendant has objected, arguing that the risk posed by defendant's possession of the discovery while in custody and beyond is speculative and minimal at best. The government anticipates presenting evidence outlining that defendant has, on multiple occasions, threatened to republish materials contained in the discovery on his website "copblaster" in an attempt to harass and vex individuals who may be witnesses in administrative hearings, supervised release violation hearings or new criminal conduct. Further, several reports of misconduct are contained in the discovery, and defendant's retention of material stemming from current and pending administrative custody or disciplinary issues is entirely inappropriate as those individuals are still charged with supervising defendant while in custody.

The government believes that defendant, either through a third party or upon release, will simply republish the content of the discovery. While defendant's threats about publishing the discovery and other material may or may not give rise to additional criminal conduct, the government does note that 18 U.S.C. §119 criminalizes the publication of the identifying information of individuals protected by statute, including law enforcement.

II. DISCUSSION

The authority to limit access to discovery is well founded within Rule 16(d)(1) ("Protective and Modifying Orders") of the Federal Rules of Criminal Procedure and its history, under which the court may "[a]t any time . . . for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." The Rules Advisory Committee specifically designed Rule 16(d)(1) to provide a mechanism to protect witness safety, and to grant **Government's Reply to Defendant's Opposition to Government's Protective Order, 3:13-CR-00064-HZ & 3:14-CR-00190-HZ; Sullivan**

considerable discretion to the district court in drafting orders under that rule. *See Fed. R. Crim. P.* 16 advisory committee's note (1974 Amendment); *United States v. Fort*, 472 F.3d 1106, 1131 (9th Cir. 2007); *United States v. Shryock*, 342 F.3d 948, 983 (9th Cir. 2003) (protective order allowing the government to provide defense counsel with one copy of covered documents to be kept in a secure location accessible only to defense counsel was reasonable under circumstances).

The right to access to materials must be considered against a number of factors. A defendant's right to conduct his defense "must be balanced with security considerations and the limitations of the prison system." *United States v. Robinson*, 913 F.2d 712, 717 (9th Cir. 1990) (district court's restrictions on access to discovery out of concern of the burden placed on prison authorities were reasonable). "[T]he trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against unwarranted disclosure of the materials which they may be entitled to inspect." *Alderman v. United States*, 394 U.S. 165, 185, (1969) (citing prior version of Fed R. Crim. P. 16(d)); *see also Bittaker v. Woodford*, 331 F.3d 715, 726 (9th Cir. 2003) ("The power of courts . . . to delimit how parties may use information obtained through the court's power of compulsion is of long standing and well-accepted."). In doing so, the court should seek to ensure that disclosure of discovery materials to a defendant "involve[s] a minimum hazard to others." *Alderman*, 394 U.S. at 185. .

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III. CONCLUSION

Here, given defendant's prior conduct and his current threats, defendant's access to and retention of materials given in discovery should be significantly limited.

Dated this 1st day of May 2017.

Respectfully submitted,

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g/ Gregory R. Nyhus

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